

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

J. J. KELLER & ASSOCIATES, INC.,)	
)	
Plaintiff,)	
)	Case No. 06-C-1253
v.)	
)	
INDIANA TESTING, INC.,)	
)	
Defendant.)	
)	

CONSENT JUDGMENT

Upon stipulation and agreement between plaintiff, J. J. KELLER & ASSOCIATES, INC., (“J. J. Keller”) and defendant, INDIANA TESTING, INC. (“ITI”), the Court being fully apprised,

WHEREAS:

- A. J. J. Keller is a Wisconsin corporation, located and doing business at 3003 West Breezewood Lane, Neenah, Wisconsin 54957. J. J. Keller is in the business of producing, selling and licensing software products, business forms, video tapes and other print and electronic publications, particularly relating to the transportation safety field.

- B. ITI is an Indiana corporation, located and doing business at 8291 Indy Court, Indianapolis, Indiana 46214, is in the business of drug and alcohol testing and related goods and services, some of which compete with those of J. J. Keller.

- C. This is an action for alleged copyright infringement and breach of license.
- D. ITI has appeared but has not filed an answer to the Complaint due to ongoing settlement discussions and by agreement of the parties.
- E. J. J. Keller alleges that it is the owner of all right, title and interest in U.S. Copyright Registration Nos. TX 5-612-265, TX 5-443-572, TX 5-801-607, TX 6-325-200, TX 5-719-922, TX 2-206-302, TX 3-035-859, TX 2-206-303 and PA 1-201-696 (“the Copyrighted Works,” attached hereto as Exhibit A). J. J. Keller further alleges that its Copyrighted Works are distributed to trial users, purchasers and/or licensees pursuant to its Product License and Warranty Statement and New User Sign Up, preventing resale of its Copyrighted Works.
- F. J. J. Keller alleges that ITI publishes, markets, advertises, offers for sale and/or sells transportation safety-related publications known as *CDL Drivers Qualification Files* and *FMCSA Drug and Alcohol Program* (the “Accused Works”), that contain allegedly unauthorized infringing copies of J. J. Keller’s Copyrighted Works.
- G. ITI denies infringing J. J. Keller’s Copyrighted Works.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- 1. The Court has jurisdiction over the subject matter of this action and defendant ITI and venue is proper.
- 2. Without admitting liability under the allegations of the Complaint, defendant agrees not to contest the validity of J. J. Keller’s copyrights in

the Copyrighted Works or the validity of the copyright registrations relating thereto.

3. Defendant, its affiliates, agents, employees, successors, assigns and those persons in active concert or participation with and for the benefit of it are hereby permanently enjoined forthwith from publishing, marketing, advertising, using, offering for sale and/or selling publications that infringe J. J. Keller's Copyrighted Works, or that contain copies of any original works that ITI knows to be published by J. J. Keller because the original materials bear J. J. Keller identifiers or are otherwise known to ITI to be works of J. J. Keller;

Notwithstanding the foregoing, ITI shall not be in violation of this Consent Judgment if ITI makes copies of material from public domain sources, materials covered by Section 105 of the U.S. Copyright Act (17 U.S.C. § 105) or other materials not subject to registration under the Copyright Act, even if those materials are included in J. J. Keller's Copyrighted Works, as long as ITI does not copy J. J. Keller's original works of authorship, which may include the selection, organization and presentation of the material and graphic elements. ITI shall not be precluded from raising as a defense that its materials fall within the "scènes à faire" doctrine.

4. Defendant represents that it no longer possesses or controls any copies of the Accused Works alleged to contain J. J. Keller's Copyrighted Works. If ITI hereafter discovers any such copies of the Accused Works, ITI will,

within five (5) days after discovery destroy the portions of the Accused Works alleged to contain the Copyrighted Works found to be in its possession and control.

5. This action is dismissed with prejudice subject to jurisdiction of this cause and of the parties being retained by the Court for the purpose of enabling the parties to apply to this Court at any time for such orders, modifications or corrections that may become necessary for the enforcement of this Consent Judgment and the Settlement Agreement between ITI and J. J. KELLER. If ITI is found by the Court to have violated this Consent Judgment, ITI shall be liable for, including, but not limited to, J. J. Keller's reasonable attorneys' fees, costs and damages incurred by reason of such violation and the enforcement of this Consent Judgment.
6. The parties waive their right to appeal from this Consent Judgment and each bear their own costs and fees of this action.

ENTERED:

Date: March 21, 2007

s/AARON E. GOODSTEIN
United States Magistrate Judge

The parties and their counsel hereby agree to the entry of the foregoing Consent Judgment:

J. J. KELLER & ASSOCIATES, INC.

INDIANA TESTING, INC.

By: /s/ Lee M. Seese

By: /s/ Jeffrey Kosc

Name: Lee M. Seese

Name: Jeffrey Kosc

Title: Attorney

Title: Attorney

Date: March 21, 2007

Date: March 15, 2007

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